

General Information Letter: Creditable taxes paid to another state include the amount paid for a transferable credit.

March 11, 2005

Dear:

This is in response to your letter dated February 17, 2005, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

This letter is pursuant to our conversation of February 16th, concerning the Credit for Tax Paid in Missouri on an Illinois resident's 2004 tax return. I appreciate your time and attention to this matter. The issue concerns Illinois residents Mr. & Mrs. Z, Social Security # XXX-XX-XXXX & # XXX-XX-XXXX.

The facts are as follows:

Mr. and Mrs. Z purchased \$80,000 of Missouri Historic Preservation Tax Credits, at a slight discount, in 2005. Mr. and Mrs. Z have taxable income in Missouri and will utilize the credit on their 2004 Missouri income tax return. The credit will reduce the amount of tax due to Missouri. Any credit not fully utilized on the 2004 Missouri return will be available for carryback in Missouri to the 2001, 2002, and 2003 tax years. When the Missouri tax refund is received, the full amount of the refund, including the discount, will be taxable on Mr. and Mrs. Z's Missouri and Illinois tax returns. Additionally, the credit purchase is deductible in 2005, the year purchased, as an itemized deduction, state income tax paid, on Federal Schedule A.

The question concerns the treatment of the purchase of the Missouri Tax Credit on the Illinois tax return. It is unclear whether or not the Missouri Historic Credit reduces the Missouri tax qualifying for the Foreign Tax Credit in Illinois pursuant to Section 601(b)(3) of the Illinois Income Tax Act, 86 Ill. Admin. Code Section 100.2197(c)(2). Since Mr. and Mrs. Z purchased the Missouri Historic Credit and did not generate the credit, and it is deductible for Federal income tax purposes, it appears it should be considered a payment of tax, similar to an estimated tax payment. It does not seem logical to reduce Mr. and Mrs. Z's Credit for Missouri Tax Paid on the Illinois return by the amount of the Missouri Historic Tax Credit purchased.

## **Response**

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows Illinois residents a credit for taxes paid to another state on income that is also subject to tax by Illinois. For purposes of determining the amount of tax paid to another state, 86 Ill. Admin. Code Section 100.2197(c)(2) provides:

Any credit (including a credit for taxes paid to Illinois or another state, but not including a credit that is allowed for an actual payment of tax, such as a credit for income taxes withheld, for estimated taxes paid or for an overpayment of income tax in another taxable year) that is taken into account in determining the amount of tax actually paid or payable to another state shall reduce the amount of credit to which the taxpayer is entitled.

RSMo. Section 253.550 provides for a Missouri income tax credit equal to 25% of expenses incurred in rehabilitation of certified historic structures. RSMo. Section 253.557 expressly allows the person earning the credit to transfer the credit to another taxpayer.

In Chief Counsel Advice 200126005 (May 31, 2001), the Internal Revenue Service determined that a taxpayer who purchased a transferable Colorado income tax credit and used it to offset its liability had, in effect, transferred property to the state in payment of its tax liability, and therefore was allowed an itemized deduction for income taxes paid with the credit. Although this document is not binding authority, its reasoning is applicable to the determination of whether the purchased Missouri credit reduces the amount of tax paid to Missouri or should be treated as a payment of Missouri taxes.

Accordingly, the amount paid by the Zs to purchase the Missouri Historic Preservation Credit for use against their 2004 Missouri income tax shall be treated as payment of that tax for purposes of computing the credit to which the Zs are entitled under Section 601(b)(3) of the Illinois Income Tax Act. To insure that they will be allowed the proper treatment of their payment, they should attach to their 2004 return proof that the credit was purchased and of the amount paid.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel – Income Tax